

ST 03-0122-GIL 07/22/2003 CONSTRUCTION CONTRACTORS

In Illinois, construction contractors are deemed to be the end users of the building materials (which can include modular or manufactured and pre-fabricated housing units) that they take off the market and permanently affix to real estate. As a result, these contractors incur a Use Tax liability on their cost price of the materials permanently affixed to real estate. 86 Ill. Adm. Code 130.2075. (This is a GIL.)

July 22, 2003

Dear Xxxxx:

This letter is in response to your letter dated January 21, 2003. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at www.revenue.state.il.us/Laws/regs/part1200/.

In your letter, you have stated and made inquiry as follows:

A client of ours manufactures modular homes at their plant located in STATE. Some of their homes are sold to dealers in Illinois who resell the homes to Illinois customers. The homes are attached to permanent foundations. Our client has sales representatives who travel to Illinois to meet with the dealers. In order to determine the correct amount of Illinois sales/use tax to collect, please provide us with answers to the following questions.

1. What rate of tax should be charged on the modular home's base and options?
2. Is a factor for the cost of labor that goes into the manufacture of the home excluded from the tax calculation?
3. What rate of sales tax is charged on loose ship items?
4. Is sales tax charged on freight?
5. Does it make a difference if the manufacturer contracts for the shipment of the home or if the dealer picks the home up at the STATE plant?
6. Does it make a difference if the manufacturer sets the home or if the dealer sets the home?
7. Are HUD qualifying homes treated any differently than non-HUD qualifying homes?

Our client wants to understand the Illinois sales/use tax rules that apply to the manufacture and sale of modular homes. Having to deal with several states taxing authorities can be overwhelming. By helping us to apply the Illinois sales/use tax rules to the manufacture and sale of modular homes will assure that the proper amount of tax is remitted to Illinois.

Thank you for your assistance.

The specific tax liability of modular or manufactured home dealers depends upon whether they act as retailers or construction contractors in their transactions. Enclosed is a copy of 86 Ill. Adm. Code 130.2075 concerning the taxation of construction contractors. In Illinois, construction contractors are deemed to be the end users of the building materials (which can include modular or manufactured and pre-fabricated housing units) that they take off the market and permanently affix to real estate. As a result, these contractors incur a Use Tax liability on their cost price of the materials permanently affixed to real estate.

Illinois retailers making such sales to contractors also incur Retailers' Occupation Tax on the gross receipts from the sales of these building materials to the contractors and are required to collect the Use Tax from them. Thus, contractors having contracts with customers to sell and permanently affix modular or manufactured or pre-fabricated homes incur a Use Tax liability on their cost price of materials permanently affixed to real estate. If the contractors do not remit this tax to Illinois registered suppliers, the contractors must register and self-assess and remit the Use Tax to the Department. See 86 Ill. Adm. Code 130.2075, enclosed. Please note that sales by construction contractors to customers of completed, permanently affixed dwellings are sales of real property and are not taxed under the Illinois sales tax laws.

In contrast, if Illinois sellers of modular, manufactured, or pre-fabricated homes do not have contracts with purchasers to permanently affix the homes to real estate, they do not act as construction contractors and do not incur a Use Tax liability. Rather, they act as retailers of tangible personal property and incur a Retailers' Occupation Tax liability and must collect the corresponding Use Tax based on selling price from their purchasers unless an exemption applies (e.g., a sale for resale would occur if the purchaser resells the home to a contractor). These types of transactions are treated as "over-the-counter" retail sales of the pre-fabricated units.

As a technical proposition, handling charges represent a retailer's cost of doing business, and are consequently always included in gross charges subject to tax. See, 86 Ill. Adm. Code 130.410. However, such charges are often stated in combination with shipping charges. In this case, charges designated as "shipping and handling," as well as delivery or transportation charges in general, are not taxable if it can be shown that they are both agreed to separately from the tangible personal property sold and that such charges are actually reflective of the costs of shipping. To the extent that shipping and handling charges exceed the costs of shipping, the charges are subject to tax. As indicated above, charges termed "delivery" or "transportation" charges follow the same principle.

The best evidence that shipping and handling or delivery charges have been agreed to separately by purchasers and retailers are separate contracts for shipping and handling or delivery. However, documentation that demonstrates that purchasers had the option of taking delivery of the property, at the sellers' location for the agreed purchase price, plus an ascertained or ascertainable delivery charge, will suffice. If retailers charge customers shipping and handling or delivery charges that exceed the retailers' cost of providing the transportation or delivery, the excess amount is subject to tax.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.